

DEPARTMENT OF STATE REVENUE
SUPPLEMENTAL LETTER OF FINDINGS NUMBER: 04-0318
Adjusted Gross Income Tax for 2003

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Adjusted Gross Income Tax—Imposition

Authority: IC 6-8.1-5-1(b); IC 6-3-2-1(a); IC 6-3-1-12; State Election Board v. Evan Bayh, 521 N.E.2d 1212 (Ind. 1988); NRS 483.245; NRS 483.141; NRS 483.230; NRS 483.240.

The taxpayer protests the imposition of the adjusted gross income tax.

STATEMENT OF FACTS

Taxpayer moved to Nevada in April 2003. He filed an Part-Year Non-Resident Indiana Adjusted Gross Income Tax return for 2003 (IT-40PNR). On the form, he sought a refund of excess income tax that had been withheld and paid to the State of Indiana. The Department denied Taxpayer's request for refund and issued an assessment for underpayment of income tax on the basis that Taxpayer had been a full-year resident of Indiana in 2003 despite having moved to Nevada in April 2003. Taxpayer protested the refund denial and assessment; a hearing was scheduled.

Taxpayer submitted documentation to support his request for refund and to rebut the income tax assessment. Taxpayer requested that the decision be based upon review of the submitted documentation in lieu of a hearing. A letter of findings was issued denying the refund and upholding the assessment. Taxpayer filed a request for rehearing. Taxpayer submitted additional documentation and requested that the decision in this supplemental letter of findings be based upon review of the additional submitted documentation in lieu of a rehearing.

Adjusted Gross Income Tax--Imposition

DISCUSSION

All tax assessments are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b).

Indiana imposes an adjusted gross income tax pursuant to the provisions of IC 6-3-2-1(a):

Each taxable year, a tax at the rate of three and four-tenths percent (3.4%) of adjusted gross income is imposed upon the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person.

The Department denied Taxpayer's request for refund of the Indiana adjusted gross income taxes remitted to Indiana for the period May 2003 through December 2003. Taxpayer asserts that he earned that income as a non-resident of Indiana and is not subject to the imposition of the tax. The issue to be determined is whether Taxpayer was an Indiana resident for purposes of Indiana adjusted gross income taxation for all of 2003. Because Nevada does not have an adjusted gross income tax, no issue exists concerning the imposition of double taxation.

For purposes of adjusted gross income tax, IC 6-3-1-12 defines the term "resident" as "any individual who was domiciled in this state during the taxable year." In accordance with this definition, Taxpayer would be considered an Indiana resident and subject to tax on income earned during the period when he was domiciled in Indiana.

The Indiana Supreme Court considered the issue of the meaning of domicile in State Election Board v. Evan Bayh, 521 N.E.2d 1212 (Ind. 1988). In the case, Mr. Bayh desired to run for governor of Indiana. Pursuant to public discussion concerning whether he met the residency requirements for governor, Mr. Bayh sought a declaratory judgment. The Indiana Supreme Court affirmed the trial court's decision that the standard for residency was whether or not Mr. Bayh had an Indiana domicile. The court affirmed that Mr. Bayh was domiciled in Indiana.

Domicile in Indiana is defined as "the place where a person has his true, fixed, permanent home and principal establishment, and to which place he has, whenever he is absent, the intention of returning." *Id.* at 1317. Once established, a person's domicile is presumed to continue until the person's actions provide adequate evidence that along with moving to another jurisdiction, the person intends to establish a domicile in the new residence. Whether the person has successfully established a new domicile is a question of fact to be determined by the trier of fact. *Id.* Some of the facts considered were that Mr. Bayh paid in-state tuition at Indiana University, out-of-state tuition at the University of Virginia law school and voted in the elections in Vigo County, Indiana. He also registered for the draft from Indiana. The Supreme Court considered these acts adequate evidence to prove that Mr. Bayh intended to return to Indiana and retained his Indiana domicile even though he had lived outside the state for several years.

Taxpayer accepted a transfer to a job in Nevada in April 2003. Taxpayer argues that this move established his domicile in Nevada in April 2003. However, Taxpayer did not move his car to Nevada, obtain a Nevada driver's license, or register to vote in Nevada until 2004. In September 2003—four months after Taxpayer moved to Nevada—he took the time and trouble to renew the expired Indiana license plate for his car. These acts on the part of the taxpayer indicate that he did not establish his domicile in Nevada until 2004.

Taxpayer argues that waiting until 2004 to move his car, obtain a Nevada driver's license, and registering to vote were acts of oversight. Taxpayer asks the Department to consider his state of mind. Nevada has strict vehicle registration requirements and even stricter driver's license requirements. Nevada law requires a resident to obtain a Nevada driver's license within 30 days

of becoming a resident. NRS 483.245 (1995). That means Taxpayer was required to have obtained a Nevada driver's license by May 2003 to have established residency and to have legally driven within Nevada. *See* NRS 483.141 (1997), defining "resident". Taxpayer stated that he drove a rental car until his car was shipped to him in January 2004. Taxpayer was provided a rental car by the company he worked for and that the car was made available to him upon his arrival in Nevada in April 2003. Nevada prohibits someone from driving within the state unless he has a valid driver's license. *See* NRS 483.230 (1969) and NRS 483.240 (1969). Taxpayer was legally able to drive within Nevada because he held a valid Indiana driver's license obtained as a domiciled resident of Indiana.

Taxpayer has not meet his burden of proving that he changed his domicile from Indiana to Nevada during the 2003 tax period.

FINDING

The taxpayer's protest is denied.

AAG/JMM 052810